

STATEMENT OF EMERGENCY
702 KAR 1:192E

This emergency administration regulation is being promulgated pursuant to KRS 13A.190(1)(a)(1) to meet an imminent threat to public health, safety, welfare, or the environment. The regulation is necessary to mitigate the spread of COVID-19 in Kentucky public schools, specifically by providing quarantine leave to school district employees during the 2021-2022 school year. Due to promulgation time, an ordinary regulation would not be effective for the remainder of the current school year, resulting in potential hardship to school districts and quarantined employees. School districts currently lack the ability to provide leave to employees placed on quarantine due to COVID-19 exposure. This regulation authorizes local school districts, to provide quarantine leave to full and part-time employees placed on quarantine by a licensed physician, licensed physician's assistant, licensed advanced practice registered nurse, health department, or by the school district. This emergency administrative regulation will be replaced by an ordinary administrative regulation. Pursuant to KRS 13A.190, the administrative agency submitted documentary evidence at the time of filing this emergency regulation which shows the rate of COVID-19 cases among Kentuckians between October 1, 2021 and November 30, 2021, as well as its obligation to promulgate a regulation pursuant to KRS 156.160.

ANDY BESHEAR, Governor
LU S. YOUNG, Chair

EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Kentucky Board of Education
Department of Education
(New Emergency Administrative Regulation)

702 KAR 1:192E. District employee quarantine leave.

EFFECTIVE: December 8, 2021

RELATES TO: KRS 156.070, 156.160, 160.290

STATUTORY AUTHORITY: KRS 156.070, 156.160

NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.160 requires the Kentucky Board of Education to promulgate administrative regulations establishing standards which school districts shall meet in student, program, service, and operational performance, including regulations for the protection of the physical welfare and safety of public school children, as well as the pay of teachers during absence because of sickness or quarantine. KRS 156.070 provides the Kentucky Board of Education with the management and control of the common schools and all programs operated in those schools. KRS 160.291 authorizes fringe benefit payments by local boards of education which are deemed to be for services rendered for the benefit of the common schools. This administrative regulation establishes paid quarantine leave to employees in response to the COVID-19 emergency. This emergency regulation is necessary to address the imminent threat to public health, safety, and welfare; and to protect human health; while safely and efficiently operating public schools during the 2021-22 school year in light of the COVID-19 public health emergency.

Section 1. COVID-19 Quarantine Leave. (1) During the 2021-22 school year, each district board of education shall provide each eligible person employed as a full or part-time employee in the public schools paid leave during the period the employee is placed in quarantine due to

exposure to COVID-19. Exposure to COVID-19 shall include exposure to any variant of COVID-19. This leave shall be in addition to any other leave provided by statute or board policy.

(2) In order to be eligible for leave under this section, the employee shall:

(a) Be placed in quarantine due to COVID-19 exposure by a licensed treating physician, physician's assistant, or advanced practice registered nurse, a public health department, the Department for Public Health, or the school district for which the employee works; and

(b) Have received either two (2) doses of the Pfizer or Moderna COVID-19 vaccine or a single dose of Johnson & Johnson's Janssen vaccine prior to the quarantine period, present a statement from a treating medical professional that a disability prevents the employee from taking the COVID-19 vaccine, or is prevented from taking the COVID-19 vaccination based on sincerely held religious belief.

(3) If a school district places an employee on quarantine due to exposure to COVID-19, then the district shall provide the employee with written documentation supporting the quarantine determination.

(4) A school district may require the employee to provide written documentation from the entity placing the employee in quarantine due to COVID-19 exposure.

(5) Quarantine leave shall not be used if the employee has an active COVID-19 infection.

(6) A school district, at its discretion, may determine quarantine leave is unnecessary when an employee can fulfill his or her job duties remotely during the quarantine period.

(7) In order to shorten the quarantine period, a school district may require an employee on quarantine leave to undergo a COVID-19 test at district expense and provide the results to the district. Such test shall occur no sooner than the earliest date recommended by Centers for Disease Control (CDC) and Department for Public Health quarantine guidelines. A district may require an employee testing negative for COVID-19 to return to work in accordance with CDC and Department for Public Health quarantine guidelines.

(8) Leave granted pursuant to this section shall not accumulate or carry over beyond the 2021-2022 school year and shall not be transferrable to any other classification of paid leave established by KRS 161.155, KRS 161.154, or local school district policy.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS 156.070(5).

JASON E. GLASS, Ed.D., Commissioner and Chief Learner

LU YOUNG, Chairperson

APPROVED BY AGENCY: December 7, 2021

FILED WITH LRC: December 8, 2021 at 12:35 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on January 27, 2022, at 10:00 am in the State Board Room, 5th Floor, 300 Sower Blvd, Frankfort, Kentucky. Individuals interested in being heard at this meeting shall notify this agency in writing five (5) working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through January 31, 2022.

CONTACT PERSON: Todd G. Allen, General Counsel, Kentucky Department of Education, 300 Sower Boulevard, 5th Floor, Frankfort, Kentucky 40601, phone 502-564-4474, fax 502-564-9321; email regcomments@education.ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Todd G. Allen

(1) Provide a brief summary of:

(a) What this administrative regulation does: The proposed emergency regulation is only applicable to the 2021-2022 school year. Under existing law, local school districts may not have a mechanism to provide leave to employees in quarantine due to the COVID-19 pandemic. The proposed emergency regulation establishes paid leave for employees placed in quarantine by a licensed physician, licensed physician's assistant, licensed advanced practice registered nurse, a health department or by the school district.

(b) The necessity of this administrative regulation: During the 2021-2022 school year, school districts may be without ability to provide leave to employees placed in quarantine due to COVID-19 exposure. As such, school district employees may be faced with the situation of being absent without leave in order to comply with a quarantine order.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 156.160(1)(l) requires the Kentucky Board of Education to promulgate regulations for: The fixing of holidays on which schools may be closed and special days to be observed, and the pay of teachers during absence because of sickness or quarantine or when the schools are closed because of quarantine. This regulation establishes the leave requirements for quarantine due to COVID-19.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation establishes the leave requirements for quarantine due to COVID-19 pursuant to KRS 156.160(1)(l).

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: N/A. This is a new regulation.

(b) The necessity of the amendment to this administrative regulation: N/A.

(c) How the amendment conforms to the content of the authorizing statutes: N/A.

(d) How the amendment will assist in the effective administration of the statutes: N/A.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Local school districts, local school district employees.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: For school year 2021-2022, this administrative regulation requires school districts to provide leave for employees subject to quarantine due to the COVID-19 pandemic.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): School districts would incur some indeterminable costs in providing paid leave to employees. Cost will depend on the number of quarantine leave days a district provides during the 2021-2022 school year as well as costs for substitute staff where appropriate.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Districts will be able to provide employees with leave when the employee is required to quarantine due to COVID-19 exposure. Districts currently cannot provide leave for quarantined employees beyond sick leave. This allows school districts to operate more safely and mitigate COVID-19 exposure risks in schools.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: The cost of the program is indeterminable and will depend on the numbers of employees placed in quarantine due to the COVID-19 pandemic and the cost to obtain substitute services where appropriate.

(b) On a continuing basis: This regulation is only applicable to the 2021-2022 school year and is in response to the COVID-19 pandemic.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: General and Federal COVID-19 relief funds (e.g. Coronavirus Aid, Relief, and Economic Security (CARES) Act, Coronavirus Response and Relief Supplemental Appropriations (CRSSA) Act, and the American Rescue Plan (ARP) Act).

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment: No additional fees or funding are anticipated to implement this regulation. However, costs are largely dependent on the number of COVID-19 quarantined employees during school year 2021-2022.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: There are no fees associated with this regulation.

(9) TIERING: Is tiering applied? Tiering is not applied. This regulation applies uniformly to all school districts.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Local school districts.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 156.160(1)(l) requires the Kentucky Board of Education to promulgate regulations for: The fixing of holidays on which schools may be closed and special days to be observed, and the pay of teachers during absence because of sickness or quarantine or when the schools are closed because of quarantine. KRS 156.160(1)(h) requires the Kentucky Board of Education to promulgate regulations for:

[T]he protection of the physical welfare and safety of the public-school children.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. School districts would incur some indeterminable costs in providing paid leave to employees. Cost will depend on the number of quarantine leave days a district provides during the 2021-2022 school year as well as costs for substitute staff where appropriate.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This regulation will not generate revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This regulation is only applicable to the 2021-2022 school year. It will not generate revenue.

(c) How much will it cost to administer this program for the first year? The cost to administer this program during school year 2021-2022 is indeterminable.

(d) How much will it cost to administer this program for subsequent years? This regulation is only applicable to the 2021-2022 school year. School districts would incur some indeterminable cost in providing paid leave to employees. Costs will depend on the number of quarantine leave days a district provides during the 2021-2022 school year as well as costs for substitute staff where appropriate.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): N/A

Expenditures (+/-): Unknown

Other Explanation: Specific dollar estimates cannot be determined. The cost of the program is indeterminable and will depend on the numbers of employees placed in COVID-19 quarantine during the 2021-2022 school year and costs related to obtaining substitute employees where appropriate.